

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1133

Introduced by Brashear, 4; Bourne, 8

Read first time January 17, 2006

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections
2 29-4202, 29-4203, 29-4204, 29-4205, 29-4206, and 29-4207,
3 Revised Statutes Cumulative Supplement, 2004; to change
4 provisions relating to audiovisual court appearances; and
5 to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-4202, Revised Statutes Cumulative
2 Supplement, 2004, is amended to read:

3 29-4202 (1) Except for trials, when the appearance of a
4 detainee or prisoner is required in any court at a nonevidentiary
5 criminal proceeding, the detainee or prisoner may make an
6 audiovisual court appearance. However, a judge or magistrate is not
7 required to allow an audiovisual court appearance and may order the
8 detainee or prisoner to appear physically in the courtroom.

9 (2) An audiovisual court appearance shall meet the
10 conditions required by sections 29-4201 to 29-4207.

11 Sec. 2. Section 29-4203, Revised Statutes Cumulative
12 Supplement, 2004, is amended to read:

13 29-4203 When an audiovisual court appearance is made:

14 (1) The detainee or prisoner shall sign a written consent
15 and waiver of his or her right to a physical personal appearance at
16 the proceeding;

17 (2) The judge or magistrate shall verify the written
18 consent and waiver and obtain an oral waiver of the detainee's
19 or prisoner's right to a physical personal appearance at the
20 commencement of the proceeding; and

21 ~~(3) A transcribed record and a videotape of the~~
22 ~~proceeding shall be made; and~~

23 ~~(4)~~ (3) The audiovisual communication system and the
24 facilities shall meet the requirements of section 29-4204.

25 Sec. 3. Section 29-4204, Revised Statutes Cumulative

1 Supplement, 2004, is amended to read:

2 29-4204 The audiovisual communication system and the
3 facilities for an audiovisual court appearance shall:

4 (1) Operate so that the detainee or prisoner and the
5 judge or magistrate can see each other simultaneously and converse
6 with each other verbally and documents can be transmitted ~~by~~
7 ~~faesimile equipment~~ between the judge or magistrate and the
8 detainee or prisoner;

9 (2) Operate so that the detainee or prisoner and his
10 or her counsel, if any, are both physically in the same location
11 during the audiovisual court appearance; or if the detainee or
12 prisoner waives the right to have counsel physically present and
13 the detainee or prisoner and his or her counsel are in different
14 locations, operate so that the detainee or prisoner and counsel can
15 communicate privately and confidentially ~~by way of telephone~~ and be
16 allowed to confidentially ~~fax~~ transmit papers back and forth; and

17 (3) Be at locations conducive to judicial proceedings.
18 Audiovisual court proceedings may be conducted in the courtroom,
19 the judge's or magistrate's chambers, or any other location
20 suitable for audiovisual communications. The locations shall be
21 sufficiently lighted for use of the audiovisual equipment. The
22 location provided for the judge or magistrate to preside shall be
23 accessible to the public and shall be operated so that interested
24 persons have an opportunity to observe the proceeding. + and

25 ~~(4) Have at least two video cameras, one to record the~~

1 ~~detainee or prisoner and one to record the judge or magistrate. The~~
2 ~~cameras must also be capable of recording counsel and witnesses as~~
3 ~~necessary. There shall be at least two television monitors so that~~
4 ~~the detainee or prisoner and the judge or magistrate can observe~~
5 ~~the proceeding at each other's location simultaneously. There~~
6 ~~shall be facsimile equipment at both the detainee's or prisoner's~~
7 ~~location and at the judge's or magistrate's location.~~

8 Sec. 4. Section 29-4205, Revised Statutes Cumulative
9 Supplement, 2004, is amended to read:

10 29-4205 In a proceeding in which an audiovisual court
11 appearance is made:

12 (1) Facsimile signatures or electronically reproduced
13 signatures are acceptable for purposes of releasing the detainee or
14 prisoner from custody; however, actual signed copies of the release
15 documents must be promptly filed with the court and the detainee
16 or prisoner must promptly be provided with a copy of all documents
17 which the detainee or prisoner signs; and

18 ~~(2) A copy of the videotape of such proceeding shall~~
19 ~~be made upon written request of the detainee or prisoner or the~~
20 ~~prosecutor if the request is received by the court within thirty~~
21 ~~days of the date of the proceeding. The original videotape may~~
22 ~~be destroyed one year after the date of the proceeding unless an~~
23 ~~appeal is taken, in which case the original videotape shall be~~
24 ~~preserved until all appeals are concluded.~~

25 (2) The audiovisual appearance shall not be videotaped.

1 The record of the court reporter or stenographer shall be the
2 official and sole record of the proceeding; and

3 (3) On motion of the ~~defendant~~ detainee or prisoner or
4 the prosecuting attorney or in the court's discretion, the court
5 may terminate an audiovisual appearance and require an appearance
6 by the detainee or prisoner.

7 Sec. 5. Section 29-4206, Revised Statutes Cumulative
8 Supplement, 2004, is amended to read:

9 29-4206 The district courts may accept a written waiver
10 of arraignment and plea of not guilty from any defendant.
11 ~~arraignments in writing if the detainee or prisoner has entered~~
12 ~~a not guilty plea in county court.~~ The arraignment form shall
13 contain the necessary consent and waiver of the right to a physical
14 appearance, and shall be signed by the ~~detainee or prisoner~~
15 defendant and his or her counsel of record, if any, and shall be
16 filed with the clerk of the court.

17 Sec. 6. Section 29-4207, Revised Statutes Cumulative
18 Supplement, 2004, is amended to read:

19 29-4207 The Supreme Court ~~shall~~ may promulgate rules of
20 practice and procedure for implementation of sections 29-4201 to
21 29-4207.

22 Sec. 7. Original sections 29-4202, 29-4203, 29-4204,
23 29-4205, 29-4206, and 29-4207, Revised Statutes Cumulative
24 Supplement, 2004, are repealed.